

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**SECOND SUPPLEMENTAL MOTION RECORD OF THE RECEIVER**  
**(Reply to Affidavits and Update on Criminal Complaint in Panama)**

March 1, 2021

**LENCZNER SLAGHT ROYCE  
SMITH GRIFFIN LLP**

Barristers  
Suite 2600  
130 Adelaide Street West  
Toronto ON M5H 3P5

**Peter H. Griffin (19527Q)**

Tel: (416) 865-2921  
Fax: (416) 865-3558  
Email: pgriffin@litigate.com

**Monique J. Jilesen (43092W)**

Tel: (416) 865-2926  
Fax: (416) 865-2851  
Email: mjilesen@litigate.com

**Derek Knoke (75555E)**

Tel: (416) 865-3018  
Fax: (416) 865-2876  
Email: dknoke@litigate.com

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

TO: **CLARKE GITTENS FARMER**  
Parker House, Wildey Business Park,  
Wildey Road, St. Michael,  
Barbados, BB14006

Kevin Boyce  
Email: kevin.boyce@clarkes.com.bb  
Shena-Ann Ince  
Email: shena-ann.ince@clarkes.com.bb

Tel: (246) 436-6287  
Fax: (246) 436-9812

Barbados Counsel to the Receiver

AND TO: **HATSTONE GROUP**  
BICSA Financial Center,  
Floor 51, Suite 5102,  
Panama City, Republic of Panama

Alvaro Almengor  
Email: alvaro.almengor@hatstone.com  
Carl O'Shea  
Email: carl.oshea@hatstone.com

Tel: (507) 830-5300  
Fax: (507) 205-3319

Panama Counsel to the Receiver

AND TO: **BENNETT JONES**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Jeffrey S. Leon  
Email: leonj@bennettjones.com  
Sean Zweig  
Email: zweigs@bennettjones.com  
William A. Bortolin  
Email: bortolinw@bennettjones.com

Tel: (416) 361-3319  
Fax: (416) 361-1530

Co-counsel for Margarita Castillo

AND TO: **STEWART MCKELVEY**  
Suite 900, Purdy's Wharf Tower One  
1959 Upper Water St.  
PO Box 997, Stn. Central  
Halifax, Nova Scotia B3J 2X2

Jason Woycheshyn  
Email: [jwoycheshyn@stewartmckelvey.com](mailto:jwoycheshyn@stewartmckelvey.com)

Tel: (902) 420-3200  
Fax: (902) 420-1417

Co-Counsel for Margarita Castillo

AND TO: **CAMBRIDGE LLP**  
333 Adelaide Street West  
4th Floor  
Toronto, ON M5V 1R5

Christopher Macleod  
Email: [cmacleod@cambridgellp.com](mailto:cmacleod@cambridgellp.com)  
N. Joan Kasozi  
Email: [jkasoz@cambridgellp.com](mailto:jkasoz@cambridgellp.com)

Tel: (416) 477-7007  
Fax: (289) 812-7385

Ontario Lawyers for Juan Guillermo  
Gutierrez, Respondents

AND TO: **GREENSPAN HUMPRHEY WEINSTEIN LLP**  
15 Bedford Road  
Toronto, Ontario M5R 2J7

Brian H. Greenspan  
Email: [bhg@15bedford.com](mailto:bhg@15bedford.com)

Tel: (416) 868-1755 Ext. 222  
Fax: (416) 868-1990

Lawyers for Juan Guillermo Gutierrez, Respondents

AND TO: **DEPARTMENT OF JUSTICE CANADA**

Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1T1

Diane Winters  
Email: Diane.Winters@justice.gc.ca

Tel: (416) 973-3172  
Fax: (416) 973-0810

Lawyers for Canada Revenue Agency

AND TO: **STIKEMAN ELLIOTT LLP**

Suite 5300  
Commerce Court West  
199 Bay Street  
Toronto, ON M5L 1B9

Katherine Kay  
Email: KKay@stikeman.com  
Aaron Kreaden  
Email: AKreaden@stikeman.com

Tel: (416) 869-5507  
Fax: (416) 618-5537

Lawyers for the Avicola Group and each of  
Juan Luis Bosch Gutierrez, Felipe Antonio  
Bosch Gutierrez, Dionisio Gutierrez  
Mayorga, and Juan Jose Gutierrez  
Moyorga

AND TO: **THE ARTCARM TRUST**  
c/o Alexandria Trust Corporation  
Suite 3  
Courtyard Building  
The Courtyard  
Hastings Main Road  
Christ Church  
Barbados, BB15156

Robert Madden  
Email: robert.madden@alexandriabancorp.com

Debbie McDonald  
Email: Debbie.McDonald@alexandriatrust.com

Tel: (246) 228-8402  
Fax: (246) 228-3847

AND TO: **HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF ONTARIO AS  
REPRESENTED BY THE MINISTER OF  
FINANCE**  
Legal Services, 6th Floor, 33 King Street West  
Oshawa, ON L1H 8H5

Steven Groeneveld  
Email: steven.groeneveld@ontario.ca

Tel: (905) 431-8380

AND TO: **CORPORACION ARVEN, LIMITED**  
First Floor  
Hastings House,  
Balmoral Gap  
Hastings, Christ Church  
Barbados

Attention: Patrick A. Doig  
Email: pdoig@bdtinvestments.com

Tel: (246) 434-2640  
Fax: (246) 435-0230

AND TO: **REGINALD M. MCLEAN**  
1035 McNicoll Ave.  
Scarborough, ON M1W 3W6  
Tel: (416) 512-1200  
Email: maclaw@bellnet.ca

Ontario Lawyers for BDT Investments Inc.

AND TO: **EMPRESAS ARTURO  
INTERNATIONAL LIMITED**  
First Floor, Hastings House  
Balmoral Gap  
Hastings, Christ Church  
Barbados  
Attention: Patrick A. Doig  
Tel: (246) 434-2640  
Fax: (246) 435-0230  
Email: pdoig@bdtinvestments.com

AND TO: **BDT INVESTMENTS INC.**  
#2 Rendezvous Road  
Worthing, Christ Church  
Barbados  
Attention: Patrick A. Doig  
Tel: (246) 434-2640  
Fax: (246) 435-0230  
Email: pdoig@bdtinvestments.com

AND TO: **WEIRFOULDS LLP**  
66 Wellington Street West, Suite 4100,  
TD Bank Tower. Toronto, Ontario,  
M5K1B7, Canada

Philip Cho  
Email: pcho@weirfoulds.com  
Ada Keon  
Email: akeon@weirfoulds.com

Tel: (416) 619-6296  
Fax: (416) 365-1876

Lawyers for Arturo's Technical Services Ltd. and BDT Investments Inc.

AND TO: **JULIO CESAR NÚÑEZ GRIMAS**  
Edificio HH, Primer Piso, Oficina No 03,  
Calle Herbruger, Transistimica,  
Republica de Panama  
Email: jcngrimas@gmail.com

AND TO: **ALFARO, FERRER & RAMIREZ ABOGADOS**  
Avenida Samuel Lewis,  
P.H. Edificio AFRA, 9th floor,  
54 St East, Panama  
Republica de Panama

Luis R. López Alfar  
Email: lopezalfaro@afra.com

Tel: (507) 263-9355  
Fax: (507) 263-7214

AND TO: **HARALD JOHANNESSEN HALS**  
6 Avenida "A" 8-00, Zona 9,  
Edificio Centro Operativo, Penthouse "B"  
Ciudad de Guatemala  
Email: harald.johannessen1951@gmail.com  
Email: H\_Johannessen@granadavalley.com

AND TO: **CALVIN SHIELDS**  
4118 Oakmont Court,  
Vero Beach, Florida 32967 USA  
Email: cal@calshields.com



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**INDEX**

<b>Tab</b>	<b>Description</b>	<b>Page No.</b>
1	Third Supplement to the Fourth Report of the Receiver dated March 1, 2021	1



**Third Supplement to the Fourth Report of  
KSV Restructuring Inc.  
as Receiver and Manager of  
Xela Enterprises Ltd.**

**March 1, 2021**

<b>Contents</b>		<b>Page</b>
1.0	Introduction.....	1
2.0	Response to the Juan Guillermo Affidavit .....	2
3.0	Response to the Andres Affidavit.....	2
4.0	Update on Panama Criminal Proceedings .....	3
4.1	Juan Guillermo and the February 10 <sup>th</sup> Order .....	3
4.2	Hals and the February 10 <sup>th</sup> Order .....	4
5.0	Conclusions .....	4

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
Juan Guillermo’s February 12, 2021 Affidavit.....	A
Hals’ February 15, 2021 Letter to Juan Guillermo .....	B



COURT FILE NO.: CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**MARGARITA CASTILLO**

**Applicant**

**- And -**

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ AND CARMEN S. GUTIERREZ, AS EXECUTOR OF THE ESTATE OF JUAN ARTURO GUTIERREZ**

**Respondents**

**AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.**

**THIRD SUPPLEMENT TO THE FOURTH REPORT OF KSV RESTRUCTURING INC.**

**MARCH 1, 2021**

**1.0 Introduction**

1. This report (the **“Third Supplemental Report”**) supplements the Fourth Report of the Receiver dated January 18, 2021 (the **“Fourth Report”**).
2. Capitalized terms used but not defined in this Third Supplemental Report have the meaning provided to them in the Fourth Report.
3. The purposes of the Third Supplemental Report are to:
  - a. respond to certain issues raised by Juan Guillermo in his affidavit sworn on February 22, 2021 (the **“Juan Guillermo Affidavit”**);
  - b. respond to certain issues raised by Andres Gutierrez in his affidavit sworn on February 22, 2021 (the **“Andres Affidavit”**);
  - c. provide an update concerning the criminal proceedings commenced in Panama against representatives of Hatstone, the Receiver’s legal counsel in Panama; and
  - d. recommend that the Court make an order compelling Juan Guillermo to pay the costs of Hatstone and the Receiver in Panama and Canada to fund the defence of the Criminal Complaint, including their costs to-date dealing with this issue.

## 2.0 Response to the Juan Guillermo Affidavit

1. At paragraph 19 of the Juan Guillermo Affidavit, Juan Guillermo implies that the Receiver may be surveilling him and his personal residence. The Receiver confirms that it is neither surveilling Juan Guillermo nor his house.
2. At paragraphs 6, 17-19, 49-53, 68 and 122 of the Juan Guillermo Affidavit, Juan Guillermo suggests that the Receiver is conspiring with the Cousins. Juan Guillermo references time entries in the legal dockets of Aird & Berlis, one of the Receiver's lawyers on this matter. The Receiver has had infrequent discussions with Stikeman Elliot LLP, counsel to the Cousins, concerning these proceedings. As with any receivership proceeding, the Receiver discusses proceedings with parties that have an interest, or that may have an interest, in the proceedings, including counsel for Juan Guillermo. The Receiver is not coordinating (or conspiring) with the Cousins. The Receiver is an officer of the Court, and its duties and obligations in such capacity are well known to it.
3. At paragraph 117 of the Juan Guillermo Affidavit, Juan Guillermo says that the Receiver's agent, Duff & Phelps ("**D&P**"), performed a deletion analysis and that there was "no suspicious activity". This is not true. D&P advised the Receiver that it would not be able to perform the work in paragraphs 7 and 8 of the October 27, 2020 Order because of the conditions imposed by Juan Guillermo. As such, no deletion analysis was performed by D&P. Juan Guillermo refused to allow D&P to perform this analysis in the manner authorized by the October 27, 2020 Order.
4. At paragraph 118 of the Juan Guillermo Affidavit, Juan Guillermo suggests that the Receiver requested another kind of forensic analysis after his devices were imaged. This is also not true. The Receiver sought to conduct the forensic deletion analysis authorized by the October 27, 2020 Order at the time Juan Guillermo's devices were imaged. However, he and his counsel refused to allow the Receiver's agent to perform this analysis in the manner authorized by the October 27, 2020 Order. The imaging was performed without prejudice to the Receiver's position.

## 3.0 Response to the Andres Affidavit

1. At paragraph 36 and Exhibit 18B of the Andres Affidavit, Andres says that the Company's bank account with Toronto Dominion Bank ("**TD**") is Account \*\*\*\*\*266 (the "**TD Account**"). The Receiver has access to the Company's accounts at TD, including copies of the Company's bank statements.
2. Andres says that ATS made a series of transfers from its bank account to the TD Account in satisfaction of the \$200,000 due under the agreement of purchase and sale for the Company's equipment (i.e., the Servers Agreement).
3. The Receiver has no record of the TD Account. Following receipt of the Andres Affidavit, the Receiver made inquiries with TD. The Receiver was advised that TD has no record of the alleged TD Account between 2017 and today.

4. In addition, the payment schedule described by Andres in his Affidavit does not add up to the purchase price of \$200,000 plus HST (\$226,000) reflected in the Servers Agreement. The payment schedule in the Andres Affidavit shows eight transfers of varying amounts (with no consistent time frame between payments) that begin before the date of the Servers Agreement. The total amount transferred reflects an overpayment of \$7,952 when compared to the purchase price (including HST) under the Service Agreement.

## 4.0 Update on Panama Criminal Proceedings

### 4.1 Juan Guillermo and the February 10<sup>th</sup> Order

1. Following this Court's Order dated February 10, 2021 (the "**February 10<sup>th</sup> Order**"), the Receiver received an affidavit from Juan Guillermo, sworn February 12, 2021, which included various material. The affidavit is attached as Appendix "A." Included in the affidavit was an email dated February 11, 2021 from Juan Guillermo to Javier de Leon (a lawyer for Lisa in Panama). Attached to the email was:
  - a letter directing Mr. de Leon "to withdraw the Criminal Complaint". The letter included:
    - the February 10<sup>th</sup> Order; and
    - Juan Guillermo's Affidavit dated February 11, 2021 (the "**February 11<sup>th</sup> Affidavit**") in which he stated, "I hereby withdraw the [December 3, 2020 Declaration, sworn in Guatemala] and any reliance that may have been placed upon it in support of the criminal complaint".
2. The affidavit also included a February 11, 2021 email from Juan Guillermo to Hals. He attached:
  - a letter directing Hals to "take whatever steps are within your power to effect a withdrawal [of] the Criminal Complaint". The letter included:
    - the February 10<sup>th</sup> Order; and
    - the February 11<sup>th</sup> Affidavit.
3. Also included in the affidavit was a letter dated February 11, 2021, with a DHL packaging receipt (with an estimated delivery date of February 17, 2021<sup>1</sup>) to the Panamanian Prosecutor's Office.
  - The letter referred to and attached the February 10<sup>th</sup> Order and the February 11<sup>th</sup> Affidavit.

---

<sup>1</sup> Juan Guillermo provided a DHL Shipment Receipt which shows that a package was shipped from Cambridge's office on February 11, 2021 and was expected to be delivered on February 17, 2021. The Shipment Receipt contains a tracking number, which shows that, as of February 26, 2021, the package had not been delivered for the reasons set out at paragraph 4.1.5 below.

- The letter was not addressed to any specific person at the Panamanian Prosecutor's Office, despite the fact that the Criminal Complaint and the DHL packaging receipt (which was sent by Juan Guillermo) were addressed to "Leydi Nunez".
4. Juan Guillermo's letter addressed to the Prosecutor's Office in Panama did not ask the Prosecutor or the Prosecutor's Office to withdraw the Criminal Complaint.

Juan Guillermo's Declaration was the only evidence relied upon to initiate the Criminal Complaint. In the Receiver's view, Juan Guillermo's letter is not consistent with the February 10<sup>th</sup> Order, which required Juan Guillermo to "forthwith take any and all further steps within his [Juan Guillermo's] control to effect the withdrawal of the Criminal Complaint and the Declaration."

5. The Receiver, through Hatstone, has made inquiries of the Public Prosecutor's Office. The Receiver is advised that as of February 26, 2021, the DHL package had not been delivered to the Public Prosecutor's Office. The online tracking number shows that, as of February 26, 2021, the package is on hold at DHL's office in Panama City. The Receiver made inquiries and was advised that the address provided by Juan Guillermo was insufficient for DHL to leave the package at the Public Prosecutor's Office.
6. The Receiver is advised by Hatstone that the Criminal Complaint continues to be investigated by the Panamanian Prosecutor. The Receiver is advised that police attended at the home of at least one of the Receiver's counsel at Hatstone who was appointed as a Director of Gabinvest. The individual was not at home when the police attended, but his young children were present.
7. In light of the ongoing criminal proceedings, the Receiver has retained criminal counsel in Panama to represent the Directors.

#### 4.2 Hals and the February 10<sup>th</sup> Order

1. On February 15, 2021, Hals reported to Juan Guillermo in response to this Court's February 10<sup>th</sup> Order. He expressed "amazement" at McEwen J.'s February 10<sup>th</sup> Order. He said that McEwen J. "has overstepped his powers and invades a foreign jurisdiction in a boorish and gross way". He refused to withdraw the Complaint. A certified translation of Hals' February 15, 2021 letter is provided in Appendix "B".

## 5.0 Conclusions

1. The Receiver continues to recommend that the Court grant the relief sought in the Fourth Report, the Supplemental Report and the Second Supplemental Report.
2. The Receiver also seeks an order requiring Juan Guillermo to fund the Receiver's costs of dealing with the Criminal Complaint, including the Receiver's costs incurred to-date in Canada and in Panama and until such time as the Criminal Complaint has been resolved to the satisfaction of the Receiver and this Court.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
XELA ENTERPRISES LTD. AND NOT IN ITS PERSONAL  
OR CORPORATE CAPACITY**



## Appendix “A”

Court File No. CV-11-9062-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST,  
INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S.  
GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Respondents

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

I, Juan Guillermo Gutierrez, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am making this affirmation pursuant to and in compliance with the Order of Justice McEwen of the Ontario Superior Court of Justice dated 10 February 2021 (**the "Order"**). A copy of the Order is attached hereto as **Exhibit "A"**.
2. On February 11, 2021, I affirmed in writing before a commissioner for the taking of oaths that my Affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Vastillo is withdrawn and is not to be used to support the Criminal Complaint ("**Withdrawal Affirmation**"). Attached hereto and marked as **Exhibit "B"** is a true copy of my Affidavit sworn February 11, 2021.
3. On February 11, 2021, I provided a copy of the Order and the Withdrawal Affirmation to Javier Alcides De Leon Almengor, and directed Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint. Attached hereto and marked as **Exhibit "C"** is a true copy of my email and letter with attachments that I sent to Javier Alcides de Leon Almengor on February 11, 2021.

4. On February 11, 2021, I provided a copy of the Order and the Withdrawal Affirmation to Harald Johannessen Hals and I directed Mr. Hals in writing to withdraw the Criminal Complaint. Attached hereto and marked as **Exhibit "D"** is a true copy of my email, letter and attachments that were sent to Mr. Hal on February 11, 2021.

5. On the same day, a letter was sent via courier to the public prosecutor's office in Panama with a copy of the Complaint Withdrawal. I do not have the email address for the Public Prosecutor's office in Panama. Attached hereto and marked as **Exhibit "E"** is a true copy of the letter and attachments that I sent to the Public Prosecutor and the DHL courier slip.

6. I have taken and will continue to take all steps within my control to effect the withdrawal of the Criminal Complaint and my Affidavit sworn on December 3, 2020.

7. I swear this Affidavit in compliance with paragraph 8 of the Order and for no other or improper purpose.

**SWORN BEFORE ME** via video conference at the City of Toronto, in the Province of Ontario, before me on February 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

**N. JOAN KASOZI (LSO# 70332Q)**

  
\_\_\_\_\_  
**JUAN GUILLERMO GUTIERREZ**

This is Exhibit "A" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 )  
JUSTICE MCEWEN ) TUESDAY, THE 10<sup>TH</sup>  
 DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,

was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference **13** at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
  
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.



12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **16** hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

This is Exhibit "B" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**MARGARITA CASTILLO**

Applicant

-and-

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST,  
INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S.  
GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

I, Juan Guillermo Gutierrez, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am making this affirmation pursuant to and in compliance with the Order of Justice McEwen of the Ontario Superior Court of Justice dated 10 February 2021 (**the "Order"**). A copy of the Order is attached hereto as **Exhibit "A"**.
2. The Order relates to the criminal complaint in Panama City by Harald Johannessen Hals dated 20 January 2021, entitled "QUERRELLA PENAL, EN CONTRA DE ALVARO ALMENGOR, MANUEL CARRASQUILLA Y CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE, POR LA SUPUESTA COMISION DEL DELITO CONTRA LA FE PUBLICA (FALSEDAD IDEOLOGICA) EN PERJUICIO DE GABINVEST S.A." (the "**Criminal Complaint**").
3. The Order relates to the sworn statement I made on 3 December 2020 (**the "Sworn Statement"**), concerning the Criminal Complaint. A copy of the Sworn Statement is attached hereto as **Exhibit "B"**.

4. In compliance with the Order, I hereby withdraw the Sworn Statement and any reliance that may have been placed upon it in support of the criminal complaint.

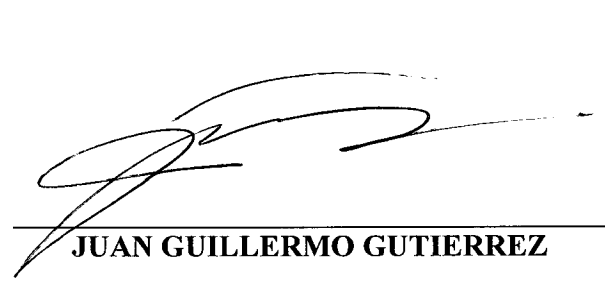
**SWORN BEFORE ME** via video conference at the City of Toronto, in the Province of Ontario, before me on February 11, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Commissioner for Taking Affidavits  
*(or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**



---

**JUAN GUILLERMO GUTIERREZ**

# EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
 )  
JUSTICE MCEWEN ) TUESDAY, THE 10<sup>TH</sup>  
 ) DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,



was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference **24**  
at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **27** to hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

# EXHIBIT B

This is Exhibit "B" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021

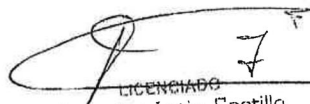


---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

1 de 2

  
 LICENCIADO  
 Jeremías Lutín Castillo  
 ABOGADO Y NOTARIO

153631



MINISTERIO

**ACTA NOTARIAL DE DECLARACIÓN JURADA.** En la ciudad de Guatemala, departamento de Guatemala, el tres de diciembre de dos mil veinte, siendo las nueve horas, Yo, **Jeremías Lutín Castillo**, Notario en ejercicio, me encuentro constituido en la sexta (6ª) avenida "A", ocho - cero cero (8-00) de la zona nueve (9), Edificio Centro Operativo, Penthouse B, de la Ciudad de Guatemala, departamento de Guatemala, a requerimiento del señor **Juan Guillermo Gutiérrez Strauss**, quien manifiesta ser de sesenta y cuatro años de edad, casado, ejecutivo, guatemalteco, con domicilio la República de Canadá, y de tránsito por esta ciudad capital, se identifica con el Documento Personal de Identificación con Código Único de Identificación dos mil quinientos diecisiete, veintiséis mil cincuenta y tres, cero ciento uno (2517260530101), extendido por el Registro Nacional de las Personas de la República de Guatemala, a efecto que por la presente **ACTA NOTARIAL DE DECLARACIÓN JURADA**, haga constar lo siguiente: **PRIMERO:** El señor Juan Guillermo Gutiérrez Strauss, enterado de las penas relativas al delito de perjurio, bajo juramento solemne prestado de conformidad con la ley, **DECLARA** lo siguiente: a) que actúa en su calidad de Director - Presidente de la entidad XELA ENTERPRISES LTD, entidad constituida e inscrita de conformidad con las leyes de la República de Canadá, Provincia de Ontario, con número de empresa en Ontario un millón doscientos noventa y siete mil quinientos ochenta (1297580; b) que su representada, es única accionista de la entidad GABINVEST, S.A., entidad constituida de conformidad con las leyes de la República de Panamá, inscrita en el Registro Público de Panamá, al folio número ciento diecisiete mil quinientos once (117511); dicha participación accionaria está sustentada con: i) certificado de acción número GI - cero cien (GI-0100) el cual ampara trescientas cuarenta y ocho (348) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD; y ii) certificado de acción número GI - cero ciento uno (GI-0101) el cual ampara setenta y cinco (75) acciones de la entidad GABINVEST, S.A.,






propiedad de XELA ENTERPRISES LTD.; iii) certificado de acción número GI – cero ciento dos (GI-0102) el cual ampara señenta y cinco (75) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD.; c) Siendo así, DECLARO que mi representada, la entidad XELA ENTERPRISES LTD, no fue notificada o convocada de ninguna forma para participar en la Asamblea de Accionistas de la entidad GABINVEST, S.A., celebrada el dieciséis de enero de dos mil veinte, mediante la cual se dejó sin efecto los nombramientos de la Junta Directiva reconocida de la entidad GABINVEST, S.A., disponiendo en tal sentido, el nombramiento de una nueva junta directiva, presidida por el señor Alvaro Almengor como Presidente, MANUEL CARRASQUILLA como Secretario y LIDIA RAMOS como Tesorera. Dichas personas no son del conocimiento de mi representada, y tampoco tienen el aval, autorización o mandato para representar a la entidad GABINVEST, S.A., por no ser miembros de Junta Directiva propuestos y electos por el Accionista de la mencionada sociedad; d) asimismo DECLARO, que nunca mi representada, en su calidad de único accionista de la entidad GABINVEST, S.A. ha celebrado Asamblea de Accionistas o ha estado informado de ninguna de sesión de esta naturaleza VÍA TELEFÓNICA celebrada con fecha veintinueve de abril de dos mil veinte, con los señores Alvaro Almengor en su supuesta calidad de Presidente de GABINVEST, S.A.; así como tampoco ha ordenado la modificación del pacto Social de la entidad GABINVEST, S.A. DE NINGUNA FORMA, por lo que cualquier decisión, nombramiento o disposición realizada por los señores Alvaro Almengor como supuesto Presidente, MANUEL CARRASQUILLA como supuesto Secretario y LIDIA RAMOS como supuesta Tesorera de la entidad GABINVEST, S.A., NO TIENE VALOR ALGUNO, y son producto de falsedad en su forma y fondo y cualquier otro delito que corresponda según los actos cometidos. **SEGUNDO:** No habiendo nada más que hacer constar se da por terminada la presente acta notarial en el mismo lugar y fecha cuarenta y cinco minutos después de su



1 de 2


Inicio, la cual se encuentra contenida en dos hojas de papel simple, útil la primera en ambos lados y la segunda en su anverso, a la que le adhiero un timbre notarial de diez quetzales y un timbre fiscal de cincuenta centavos de quetzal. Leído íntegramente lo escrito al requirente, bien impuesto de su contenido, valor y efectos legales, la ratifica, acepta y firma. DOY FE.

(f) 

DE REG  
EPART  
E AUT  
ATEMI



Ante mí:

  
LICENCIADO  
Jeremías Lutín Castillo  
ABOGADO Y NOTARIO



MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISES LTD. et al  
Respondents

Court File No. CV-11-9062-00CL

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

---

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

---

**CAMBRIDGE LLP**  
333 Adelaide Street West  
4th Floor  
Toronto, Ontario  
M5V 1R5

**Chris Macleod** (LSUC# 45723M)  
cmacleod@cambridgellp.com  
Tel: 647.346.6696

**N. Joan Kasozi** (LSUC# 70332Q)  
jkasozi@cambridgellp.com

Tel: 416.477.7007  
Fax: 289.812.7385

Lawyers for the Respondent,  
Juan Guillermo Gutierrez

This is Exhibit "C" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**From:** Juan Gutierrez <JGutierrez@arturos.com>  
**Sent:** February 11, 2021 7:23 PM  
**To:** javierdeleon0873@hotmail.com  
**Cc:** Chris Macleod  
**Subject:** Letter re Criminal Complaint.  
**Attachments:** (2021-02-11) Letter to Mr. Almengor.pdf

Please see attached,

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Javier Alcides de León Almengor  
Avenida Ricardo Alfaro  
Edificio P.H. Century Tower  
Piso 19, Oficina 1912  
Panama City, Panama

Javierdeleon0973@hotmail.com

VIA DHL and EMAIL

11 February 2021

Dear Mr. Alcides de León:

Attached as Annex A is a copy of an Order entered yesterday by Justice McEwen, the judge presiding over the receivership proceedings in Toronto (the "Order"). The Order requires withdrawal of the criminal complaint dated 20 January 2021, entitled "QUERRELLA PENAL, EN CONTRA DE ALVARO ALMENGOR, MANUEL CARRASQUILLA Y CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE, POR LA SUPUESTA COMISION DEL DELITO CONTRA LA FE PUBLICA (FALSEDAD IDEOLOGICA) EN PERJUICIO DE GABINVEST S.A." (the "Criminal Complaint").

In accordance with the Order, I have today executed an affirmation (the "Affirmation") withdrawing my sworn statement dated 3 December 2020 (the "Sworn Statement") and any reliance on it in support of the Criminal Complaint. A copy of the Affirmation is attached as Annex B. A copy of the Sworn Statement is attached as Annex C.

Further, as required by the Order, I am hereby directing you to withdraw the Criminal Complaint.

Thank you for your immediate attention to this matter.



Juan Guillermo Gutierrez

# ANNEX A

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 10<sup>TH</sup>  
 )  
JUSTICE MCEWEN ) DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,



was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference<sup>40</sup> at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
  
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **43**  
hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line. The signature is cursive and includes a large, stylized flourish at the end.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

# ANNEX B

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

MARGARITA CASTILLO

Applicant

-and-

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

I, Juan Guillermo Gutierrez, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am making this affirmation pursuant to and in compliance with the Order of Justice McEwen of the Ontario Superior Court of Justice dated 10 February 2021 (**the "Order"**). A copy of the Order is attached hereto as **Exhibit "A"**.
2. The Order relates to the criminal complaint in Panama City by Harald Johannessen Hals dated 20 January 2021, entitled "QUERRELLA PENAL, EN CONTRA DE ALVARO ALMENGOR, MANUEL CARRASQUILLA Y CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE, POR LA SUPUESTA COMISION DEL DELITO CONTRA LA FE PUBLICA (FALSEDAD IDEOLOGICA) EN PERJUICIO DE GABINVEST S.A." (the "**Criminal Complaint**").
3. The Order relates to the sworn statement I made on 3 December 2020 (**the "Sworn Statement"**), concerning the Criminal Complaint. A copy of the Sworn Statement is attached hereto as **Exhibit "B"**.

4. In compliance with the Order, I hereby withdraw the Sworn Statement and any reliance that may have been placed upon it in support of the criminal complaint.

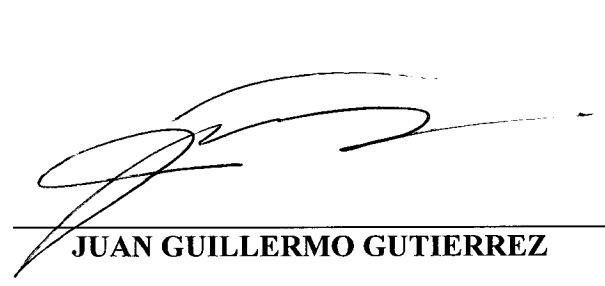
**SWORN BEFORE ME** via video conference at the City of Toronto, in the Province of Ontario, before me on February 11, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Commissioner for Taking Affidavits  
*(or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**



---

**JUAN GUILLERMO GUTIERREZ**



# EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE MCEWEN ) TUESDAY, THE 10<sup>TH</sup>  
DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,

was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference **51** at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **54** to the hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line. The signature is cursive and includes a large, stylized flourish at the end.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver



# EXHIBIT B

This is Exhibit "B" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021

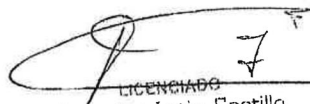


---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

1 de 2

  
 LICENCIADO  
 Jeremías Lutín Castillo  
 ABOGADO Y NOTARIO

153631

**ACTA NOTARIAL DE DECLARACIÓN JURADA.** En la ciudad de Guatemala, departamento de Guatemala, el tres de diciembre de dos mil veinte, siendo las nueve horas, Yo, **Jeremías Lutín Castillo**, Notario en ejercicio, me encuentro constituido en la sexta (6ª) avenida "A", ocho - cero cero (8-00) de la zona nueve (9), Edificio Centro Operativo, Penthouse B, de la Ciudad de Guatemala, departamento de Guatemala, a requerimiento del señor **Juan Guillermo Gutiérrez Strauss**, quien manifiesta ser de sesenta y cuatro años de edad, casado, ejecutivo, guatemalteco, con domicilio la República de Canadá, y de tránsito por esta ciudad capital, se identifica con el Documento Personal de Identificación con Código Único de Identificación dos mil quinientos diecisiete, veintiséis mil cincuenta y tres, cero ciento uno (2517260530101), extendido por el Registro Nacional de las Personas de la República de Guatemala, a efecto que por la presente **ACTA NOTARIAL DE DECLARACIÓN JURADA**, haga constar lo siguiente: **PRIMERO:** El señor Juan Guillermo Gutiérrez Strauss, enterado de las penas relativas al delito de perjurio, bajo juramento solemne prestado de conformidad con la ley, **DECLARA** lo siguiente: a) que actúa en su calidad de Director - Presidente de la entidad XELA ENTERPRISES LTD, entidad constituida e inscrita de conformidad con las leyes de la República de Canadá, Provincia de Ontario, con número de empresa en Ontario un millón doscientos noventa y siete mil quinientos ochenta (1297580); b) que su representada, es única accionista de la entidad GABINVEST, S.A., entidad constituida de conformidad con las leyes de la República de Panamá, inscrita en el Registro Público de Panamá, al folio número ciento diecisiete mil quinientos once (117511); dicha participación accionaria está sustentada con: i) certificado de acción número GI - cero cien (GI-0100) el cual ampara trescientas cuarenta y ocho (348) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD; y ii) certificado de acción número GI - cero ciento uno (GI-0101) el cual ampara setenta y cinco (75) acciones de la entidad GABINVEST, S.A.,



propiedad de XELA ENTERPRISES LTD.; iii) certificado de acción número GI – cero ciento dos (GI-0102) el cual ampara señenta y cinco (75) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD.; c) Siendo así, DECLARO que mi representada, la entidad XELA ENTERPRISES LTD, no fue notificada o convocada de ninguna forma para participar en la Asamblea de Accionistas de la entidad GABINVEST, S.A., celebrada el dieciséis de enero de dos mil veinte, mediante la cual se dejó sin efecto los nombramientos de la Junta Directiva reconocida de la entidad GABINVEST, S.A., disponiendo en tal sentido, el nombramiento de una nueva junta directiva, presidida por el señor Alvaro Almengor como Presidente, MANUEL CARRASQUILLA como Secretario y LIDIA RAMOS como Tesorera. Dichas personas no son del conocimiento de mi representada, y tampoco tienen el aval, autorización o mandato para representar a la entidad GABINVEST, S.A., por no ser miembros de Junta Directiva propuestos y electos por el Accionista de la mencionada sociedad; d) asimismo DECLARO, que nunca mi representada, en su calidad de único accionista de la entidad GABINVEST, S.A. ha celebrado Asamblea de Accionistas o ha estado informado de ninguna de sesión de esta naturaleza VÍA TELEFÓNICA celebrada con fecha veintinueve de abril de dos mil veinte, con los señores Alvaro Almengor en su supuesta calidad de Presidente de GABINVEST, S.A.; así como tampoco ha ordenado la modificación del pacto Social de la entidad GABINVEST, S.A. DE NINGUNA FORMA, por lo que cualquier decisión, nombramiento o disposición realizada por los señores Alvaro Almengor como supuesto Presidente, MANUEL CARRASQUILLA como supuesto Secretario y LIDIA RAMOS como supuesta Tesorera de la entidad GABINVEST, S.A., NO TIENE VALOR ALGUNO, y son producto de falsedad en su forma y fondo y cualquier otro delito que corresponda según los actos cometidos. **SEGUNDO:** No habiendo nada más que hacer constar se da por terminada la presente acta notarial en el mismo lugar y fecha cuarenta y cinco minutos después de su




1 de 2.

Inicio, la cual se encuentra contenida en dos hojas de papel simple, útil la primera en ambos lados y la segunda en su anverso, a la que le adhiero un timbre notarial de diez quetzales y un timbre fiscal de cincuenta centavos de quetzal. Leído íntegramente lo escrito al requirente, bien impuesto de su contenido, valor y efectos legales, la ratifica, acepta y firma. DOY FE.

(f) 

Ante mí:

  
LICENCIADO  
Jeremías Lutín Castillo  
ABOGADO Y NOTARIO



DE REG  
EPART  
E AUT  
ATEMI



MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISES LTD. et al  
Respondents

Court File No. CV-11-9062-00CL

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

---

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

---

**CAMBRIDGE LLP**  
333 Adelaide Street West  
4th Floor  
Toronto, Ontario  
M5V 1R5

**Chris Macleod** (LSUC# 45723M)  
cmacleod@cambridgellp.com  
Tel: 647.346.6696

**N. Joan Kasozi** (LSUC# 70332Q)  
jkasozi@cambridgellp.com

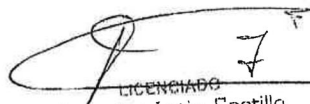
Tel: 416.477.7007  
Fax: 289.812.7385

Lawyers for the Respondent,  
Juan Guillermo Gutierrez

# ANNEX C

1 de 2

63

  
 LICENCIADO  
 Jeremías Lutín Castillo  
 ABOGADO Y NOTARIO

153631

**ACTA NOTARIAL DE DECLARACIÓN JURADA.** En la ciudad de Guatemala, departamento de Guatemala, el tres de diciembre de dos mil veinte, siendo las nueve horas, Yo, **Jeremías Lutín Castillo**, Notario en ejercicio, me encuentro constituido en la sexta (6ª) avenida "A", ocho - cero cero (8-00) de la zona nueve (9), Edificio Centro Operativo, Penthouse B, de la Ciudad de Guatemala, departamento de Guatemala, a requerimiento del señor **Juan Guillermo Gutiérrez Strauss**, quien manifiesta ser de sesenta y cuatro años de edad, casado, ejecutivo, guatemalteco, con domicilio la República de Canadá, y de tránsito por esta ciudad capital, se identifica con el Documento Personal de Identificación con Código Único de Identificación dos mil quinientos diecisiete, veintiséis mil cincuenta y tres, cero ciento uno (2517260530101), extendido por el Registro Nacional de las Personas de la República de Guatemala, a efecto que por la presente **ACTA NOTARIAL DE DECLARACIÓN JURADA**, haga constar lo siguiente: **PRIMERO:** El señor Juan Guillermo Gutiérrez Strauss, enterado de las penas relativas al delito de perjurio, bajo juramento solemne prestado de conformidad con la ley, DECLARA lo siguiente: a) que actúa en su calidad de Director - Presidente de la entidad XELA ENTERPRISES LTD, entidad constituida e inscrita de conformidad con las leyes de la República de Canadá, Provincia de Ontario, con número de empresa en Ontario un millón doscientos noventa y siete mil quinientos ochenta (1297580; b) que su representada, es única accionista de la entidad GABINVEST, S.A., entidad constituida de conformidad con las leyes de la República de Panamá, inscrita en el Registro Público de Panamá, al folio número ciento diecisiete mil quinientos once (117511); dicha participación accionaria está sustentada con: i) certificado de acción número GI - cero cien (GI-0100) el cual ampara trescientas cuarenta y ocho (348) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD; y ii) certificado de acción número GI - cero ciento uno (GI-0101) el cual ampara setenta y cinco (75) acciones de la entidad GABINVEST, S.A.,







propiedad de XELA ENTERPRISES LTD.; iii) certificado de acción número GI – cero ciento dos (GI-0102) el cual ampara señenta y cinco (75) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD.; c) Siendo así, DECLARO que mi representada, la entidad XELA ENTERPRISES LTD, no fue notificada o convocada de ninguna forma para participar en la Asamblea de Accionistas de la entidad GABINVEST, S.A., celebrada el dieciséis de enero de dos mil veinte, mediante la cual se dejó sin efecto los nombramientos de la Junta Directiva reconocida de la entidad GABINVEST, S.A., disponiendo en tal sentido, el nombramiento de una nueva junta directiva, presidida por el señor Alvaro Almengor como Presidente, MANUEL CARRASQUILLA como Secretario y LIDIA RAMOS como Tesorera. Dichas personas no son del conocimiento de mi representada, y tampoco tienen el aval, autorización o mandato para representar a la entidad GABINVEST, S.A., por no ser miembros de Junta Directiva propuestos y electos por el Accionista de la mencionada sociedad; d) asimismo DECLARO, que nunca mi representada, en su calidad de único accionista de la entidad GABINVEST, S.A. ha celebrado Asamblea de Accionistas o ha estado informado de ninguna de sesión de esta naturaleza VÍA TELEFÓNICA celebrada con fecha veintinueve de abril de dos mil veinte, con los señores Alvaro Almengor en su supuesta calidad de Presidente de GABINVEST, S.A.; así como tampoco ha ordenado la modificación del pacto Social de la entidad GABINVEST, S.A. DE NINGUNA FORMA, por lo que cualquier decisión, nombramiento o disposición realizada por los señores Alvaro Almengor como supuesto Presidente, MANUEL CARRASQUILLA como supuesto Secretario y LIDIA RAMOS como supuesta Tesorera de la entidad GABINVEST, S.A., NO TIENE VALOR ALGUNO, y son producto de falsedad en su forma y fondo y cualquier otro delito que corresponda según los actos cometidos. **SEGUNDO:** No habiendo nada más que hacer constar se da por terminada la presente acta notarial en el mismo lugar y fecha cuarenta y cinco minutos después de su



Inicio, la cual se encuentra contenida en dos hojas de papel simple, útil la primera en ambos lados y la segunda en su anverso, a la que le adhiero un timbre notarial de diez quetzales y un timbre fiscal de cincuenta centavos de quetzal. Leído íntegramente lo escrito al requirente, bien impuesto de su contenido, valor y efectos legales, la ratifica, acepta y firma. DOY FE.

(f) 

Ante mí:

  
LICENCIADO  
Jeremías Lutín Castillo  
ABOGADO Y NOTARIO



DE REG  
EPART  
E AUT  
ATEMI



This is Exhibit "D" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**Subject:** FW: Letter re Criminal Complaint  
**Attachments:** (2021-02-11) Letter to Mr. Halls.pdf

---

**From:** "[jgutierrez@arturos.com](mailto:jgutierrez@arturos.com)" <[JGutierrez@arturos.com](mailto:JGutierrez@arturos.com)>  
**Date:** Thursday, February 11, 2021 at 6:44 PM  
**To:** Harald L <[H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com)>  
**Cc:** Chris MacLeod <[cmacleod@cambridgellp.com](mailto:cmacleod@cambridgellp.com)>  
**Subject:** Letter re Criminal Complaint

Please see attached

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** Juan Gutierrez <JGutierrez@arturos.com>  
**Sent:** February 11, 2021 6:36 PM  
**To:** Harald Johannessen  
**Cc:** Chris Macleod  
**Subject:** Letter re Criminal Complaint  
**Attachments:** (2021-02-11) Letter to Mr. Halls.pdf

Please see attached letter.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Harald Johannessen Hals  
6 Av "A" 8-00, Zona 9  
Edificio Centro Operativo  
Penthouse "B"  
Guatemala City, Guatemala

[hjohannessen@granadavalley.com](mailto:hjohannessen@granadavalley.com)

VIA DHL and EMAIL

11 February 2021

Dear Harald:

Attached as Annex A is a copy of an Order entered yesterday by Justice McEwen, the judge presiding over the receivership proceedings in Toronto (the "Order"). The Order calls for withdrawal of the criminal complaint dated 20 January 2021, entitled "QUERRELLA PENAL, EN CONTRA DE ALVARO ALMENGOR, MANUEL CARRASQUILLA Y CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE, POR LA SUPUESTA COMISION DEL DELITO CONTRA LA FE PUBLICA (FALSEDAD IDEOLOGICA) EN PERJUICIO DE GABINVEST S.A." (the "Criminal Complaint").

In accordance with the Order, I have today executed an affirmation (the "Affirmation") withdrawing my sworn statement dated 3 December 2020 (the "Sworn Statement") and any reliance upon it in support of the Criminal Complaint. A copy of the Affirmation is attached as Annex B.

The Order also requires you to withdraw the Criminal Complaint. Consequently, I am hereby directing you to take whatever steps are within your power to effect a withdrawal the Criminal Complaint, and to comply in full with those portions of the Order that apply to you.

Thank you for your immediate attention to this matter.



Juan Guillermo Gutierrez

# ANNEX A

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE MCEWEN ) TUESDAY, THE 10<sup>TH</sup>  
DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,



was heard virtually this day via the Zoom videoconferencing platform by judicial videoconferencing at Toronto, Ontario due to the COVID-19 crisis. **72**

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **75** hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

# ANNEX B

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**MARGARITA CASTILLO**

Applicant

-and-

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST,  
INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S.  
GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

I, Juan Guillermo Gutierrez, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

1. I am making this affirmation pursuant to and in compliance with the Order of Justice McEwen of the Ontario Superior Court of Justice dated 10 February 2021 (**the "Order"**). A copy of the Order is attached hereto as **Exhibit "A"**.
2. The Order relates to the criminal complaint in Panama City by Harald Johannessen Hals dated 20 January 2021, entitled "QUERRELLA PENAL, EN CONTRA DE ALVARO ALMENGOR, MANUEL CARRASQUILLA Y CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE, POR LA SUPUESTA COMISION DEL DELITO CONTRA LA FE PUBLICA (FALSEDAD IDEOLOGICA) EN PERJUICIO DE GABINVEST S.A." (the "**Criminal Complaint**").
3. The Order relates to the sworn statement I made on 3 December 2020 (**the "Sworn Statement"**), concerning the Criminal Complaint. A copy of the Sworn Statement is attached hereto as **Exhibit "B"**.

4. In compliance with the Order, I hereby withdraw the Sworn Statement and any reliance that may have been placed upon it in support of the criminal complaint.

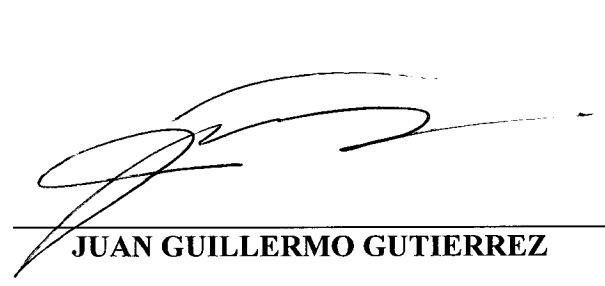
**SWORN BEFORE ME** via video conference at the City of Toronto, in the Province of Ontario, before me on February 11, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Commissioner for Taking Affidavits  
*(or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**



---

**JUAN GUILLERMO GUTIERREZ**



# EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 10<sup>TH</sup>  
 )  
JUSTICE MCEWEN ) DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,

was heard virtually this day via the Zoom videoconferencing platform by judicial videoconfer~~83~~e at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
  
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama;
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **86** hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line. The signature is cursive and includes a large, stylized flourish at the end.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver



# EXHIBIT B

This is Exhibit "B" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021



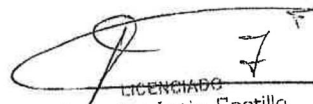
---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

1 de 2

90

  
 LICENCIADO  
 Jeremías Lutín Castillo  
 ABOGADO Y NOTARIO

153631

**ACTA NOTARIAL DE DECLARACIÓN JURADA.** En la ciudad de Guatemala, departamento de Guatemala, el tres de diciembre de dos mil veinte, siendo las nueve horas, Yo, **Jeremías Lutín Castillo**, Notario en ejercicio, me encuentro constituido en la sexta (6ª) avenida "A", ocho - cero cero (8-00) de la zona nueve (9), Edificio Centro Operativo, Penthouse B, de la Ciudad de Guatemala, departamento de Guatemala, a requerimiento del señor **Juan Guillermo Gutiérrez Strauss**, quien manifiesta ser de sesenta y cuatro años de edad, casado, ejecutivo, guatemalteco, con domicilio la República de Canadá, y de tránsito por esta ciudad capital, se identifica con el Documento Personal de Identificación con Código Único de Identificación dos mil quinientos diecisiete, veintiséis mil cincuenta y tres, cero ciento uno (2517260530101), extendido por el Registro Nacional de las Personas de la República de Guatemala, a efecto que por la presente **ACTA NOTARIAL DE DECLARACIÓN JURADA**, haga constar lo siguiente: **PRIMERO:** El señor Juan Guillermo Gutiérrez Strauss, enterado de las penas relativas al delito de perjurio, bajo juramento solemne prestado de conformidad con la ley, **DECLARA** lo siguiente: a) que actúa en su calidad de Director - Presidente de la entidad XELA ENTERPRISES LTD, entidad constituida e inscrita de conformidad con las leyes de la República de Canadá, Provincia de Ontario, con número de empresa en Ontario un millón doscientos noventa y siete mil quinientos ochenta (1297580); b) que su representada, es única accionista de la entidad GABINVEST, S.A., entidad constituida de conformidad con las leyes de la República de Panamá, inscrita en el Registro Público de Panamá, al folio número ciento diecisiete mil quinientos once (117511); dicha participación accionaria está sustentada con: i) certificado de acción número GI - cero cien (GI-0100) el cual ampara trescientas cuarenta y ocho (348) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD; y ii) certificado de acción número GI - cero ciento uno (GI-0101) el cual ampara setenta y cinco (75) acciones de la entidad GABINVEST, S.A.,



propiedad de XELA ENTERPRISES LTD.; iii) certificado de acción número GI – cero ciento dos (GI-0102) el cual ampara señenta y cinco (75) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD.; c) Siendo así, DECLARO que mi representada, la entidad XELA ENTERPRISES LTD, no fue notificada o convocada de ninguna forma para participar en la Asamblea de Accionistas de la entidad GABINVEST, S.A., celebrada el dieciséis de enero de dos mil veinte, mediante la cual se dejó sin efecto los nombramientos de la Junta Directiva reconocida de la entidad GABINVEST, S.A., disponiendo en tal sentido, el nombramiento de una nueva junta directiva, presidida por el señor Alvaro Almengor como Presidente, MANUEL CARRASQUILLA como Secretario y LIDIA RAMOS como Tesorera. Dichas personas no son del conocimiento de mi representada, y tampoco tienen el aval, autorización o mandato para representar a la entidad GABINVEST, S.A., por no ser miembros de Junta Directiva propuestos y electos por el Accionista de la mencionada sociedad; d) asimismo DECLARO, que nunca mi representada, en su calidad de único accionista de la entidad GABINVEST, S.A. ha celebrado Asamblea de Accionistas o ha estado informado de ninguna de sesión de esta naturaleza VÍA TELEFÓNICA celebrada con fecha veintinueve de abril de dos mil veinte, con los señores Alvaro Almengor en su supuesta calidad de Presidente de GABINVEST, S.A.; así como tampoco ha ordenado la modificación del pacto Social de la entidad GABINVEST, S.A. DE NINGUNA FORMA, por lo que cualquier decisión, nombramiento o disposición realizada por los señores Alvaro Almengor como supuesto Presidente, MANUEL CARRASQUILLA como supuesto Secretario y LIDIA RAMOS como supuesta Tesorera de la entidad GABINVEST, S.A., NO TIENE VALOR ALGUNO, y son producto de falsedad en su forma y fondo y cualquier otro delito que corresponda según los actos cometidos. **SEGUNDO:** No habiendo nada más que hacer constar se da por terminada la presente acta notarial en el mismo lugar y fecha cuarenta y cinco minutos después de su




Inicio, la cual se encuentra contenida en dos hojas de papel simple, útil la primera en ambos lados y la segunda en su anverso, a la que le adhiero un timbre notarial de diez quetzales y un timbre fiscal de cincuenta centavos de quetzal. Leído íntegramente lo escrito al requirente, bien impuesto de su contenido, valor y efectos legales, la ratifica, acepta y firma. DOY FE.

(f) 

DE REG  
EPART  
E AUT  
ATEMI



Ante mí:

  
LICENCIADO  
Jeremías Lutín Castillo  
ABOGADO Y NOTARIO



MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISES LTD. et al  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

**CAMBRIDGE LLP**  
333 Adelaide Street West  
4th Floor  
Toronto, Ontario  
M5V 1R5

**Chris Macleod** (LSUC# 45723M)  
cmacleod@cambridgellp.com  
Tel: 647.346.6696

**N. Joan Kasozi** (LSUC# 70332Q)  
jkasozi@cambridgellp.com

Tel: 416.477.7007  
Fax: 289.812.7385

Lawyers for the Respondent,  
Juan Guillermo Gutierrez

This is Exhibit "E" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 12, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

Ministerio Público de Panamá  
Procuraduría General de la Nación  
Edificio Saloon  
Avenida Perú y Calle 33 (Ecuador), Frente a la Basílica  
Menor Don Bosco  
Panamá, Panamá

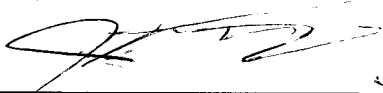
11 February 2021

Dear Sirs:

Attached as Annex A is a copy of an Order entered yesterday by Justice McEwen, the judge presiding over receivership proceedings in Toronto relating to Xela Enterprises Ltd. (the “Order”). The Order requires withdrawal of the criminal complaint dated 20 January 2021, entitled “QUERRELLA PENAL, EN CONTRA DE ALVARO ALMENGOR, MANUEL CARRASQUILLA Y CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE, POR LA SUPUESTA COMISION DEL DELITO CONTRA LA FE PUBLICA (FALSEDAD IDEOLOGICA) EN PERJUICIO DE GABINVEST S.A.” (the “Criminal Complaint”).

In accordance with the Order, I have today executed an affirmation (the “Affirmation”) withdrawing my sworn statement dated 3 December 2020 (the “Sworn Statement”) and any reliance on it in support of the Criminal Complaint. A copy of the Affirmation is attached as Annex B. A copy of the Sworn Statement is attached as Annex C.

Sincerely,



---

Juan Guillermo Gutierrez



# ANNEX A

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 10<sup>TH</sup>  
 )  
JUSTICE MCEWEN ) DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,

was heard virtually this day via the Zoom videoconferencing platform by judicial videoconfer~~98~~e at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
  
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
- (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
- (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama; **100**
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.

12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **101** to the hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

# ANNEX B



*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**MARGARITA CASTILLO**

Applicant

-and-

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

I, Juan Guillermo Gutierrez, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am making this affirmation pursuant to and in compliance with the Order of Justice McEwen of the Ontario Superior Court of Justice dated 10 February 2021 (**the "Order"**). A copy of the Order is attached hereto as **Exhibit "A"**.
2. The Order relates to the criminal complaint in Panama City by Harald Johannessen Hals dated 20 January 2021, entitled "QUERRELLA PENAL, EN CONTRA DE ALVARO ALMENGOR, MANUEL CARRASQUILLA Y CUALQUIER OTRA PERSONA QUE RESULTE RESPONSABLE, POR LA SUPUESTA COMISION DEL DELITO CONTRA LA FE PUBLICA (FALSEDAD IDEOLOGICA) EN PERJUICIO DE GABINVEST S.A." (the "**Criminal Complaint**").
3. The Order relates to the sworn statement I made on 3 December 2020 (**the "Sworn Statement"**), concerning the Criminal Complaint. A copy of the Sworn Statement is attached hereto as **Exhibit "B"**.

4. In compliance with the Order, I hereby withdraw the Sworn Statement and any reliance that may have been placed upon it in support of the criminal complaint.

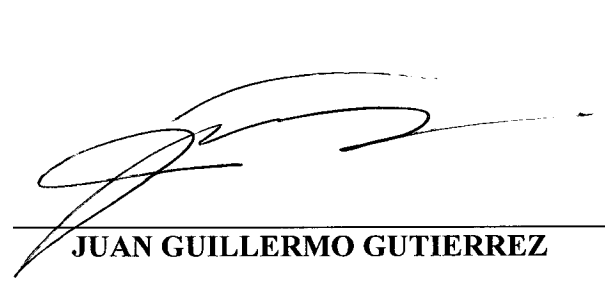
**SWORN BEFORE ME** via video conference at the City of Toronto, in the Province of Ontario, before me on February 11, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



---

Commissioner for Taking Affidavits  
*(or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**



---

**JUAN GUILLERMO GUTIERREZ**

# EXHIBIT A

This is Exhibit "A" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021



---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 10<sup>TH</sup>  
 )  
JUSTICE MCEWEN ) DAY OF FEBRUARY , 2021

B E T W E E N:

*(Court Seal)*

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES  
LTD.

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint in Panama)**

THIS MOTION for interim relief made by KSV Restructuring Inc. (“KSV”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”), without security, of the assets, undertaking and property of Xela Enterprises Ltd. (the “Company”) for an order compelling Juan Guillermo Gutierrez to withdraw a declaration (affirmed in Guatemala) and a criminal complaint (filed against the Receiver’s representatives in Panama), among other things,

was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference ~~109~~ at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Motion Record of the Receiver dated February 9, 2021 and the materials filed, and on hearing the submissions of the lawyers for the Receiver and lawyers for Juan Guillermo Gutierrez and in the presence of counsel for the Applicant, counsel for the Avicola Group and certain individuals, counsel for Arturo's Technical Services Ltd. and BDT Investments Inc. and Panamanian counsel for the Receiver,

1. **THIS COURT ORDERS** that the time for service of this Motion and the Motion Record herein are properly returnable today and hereby dispenses with further service thereof.
  
2. **THIS COURT ORDERS** that Harald Johannessen Hals ("Hals") shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021, withdraw the criminal complaint against Alvaro Almengor, Manuel Carrasquilla and Lidia Ramos made to the Public's Prosecutor's Office in Panama (File 20210000361) (the "Criminal Complaint").
  
3. **THIS COURT ORDERS** that Hals shall, within 24 hours of service of this Order to [H\\_Johannessen@granadavalley.com](mailto:H_Johannessen@granadavalley.com) and [harald.johannessen1951@gmail.com](mailto:harald.johannessen1951@gmail.com) and in any event by no later than 5 p.m. (EST) on Friday, February 12, 2021:
  - (a) direct Javier Alcides De Leon Almengor in writing to withdraw the Criminal Complaint;

- 110
- (b) execute a written withdrawal of the Criminal Complaint witnessed and affirmed before a Notary Public or commissioner for taking oaths (the “Complaint Withdrawal”);
  - (c) provide the public prosecutor’s office in Panama with a copy of the Complaint Withdrawal; and
  - (d) provide a copy of this Order and the Complaint Withdrawal Javier Alcides de Leon Almengor.

4. **THIS COURT ORDERS** that Hals shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint.

5. **THIS COURT ORDERS** that Hals shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 3 above have been completed, together with copies of all written records of the steps having been taken.

6. **THIS COURT ORDERS** that Juan Guillermo Gutierrez, also known as Juan Guillermo Gutierrez Strauss (“Juan Guillermo Gutierrez”), shall, by 5 p.m. (EST) on Thursday, February 11, 2021:

- (a) affirm in writing before a Notary Public or commissioner for the taking of oaths that his affidavit attested to on December 3, 2020 before Notary Jeremias Lutin Castillo (the “Affidavit”) is withdrawn and is not to be used to support the Criminal Complaint (the “Withdrawal Affirmation”);
- (b) provide the public prosecutor’s office in Panama with the Withdrawal Affirmation;

- (c) provide a copy of this Order to the public prosecutor's office in Panama; **111**
- (d) provide a copy of this Order and the Withdrawal Affirmation to Hals and Javier Alcides de Leon Almengor; and
- (e) direct Hals and Javier Alcides de Leon Almengor in writing to withdraw the Criminal Complaint.

7. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall forthwith take any and all further steps within his control to effect the withdrawal of the Criminal Complaint and the Affidavit.

8. **THIS COURT ORDERS** that Juan Guillermo Gutierrez shall, by 5 p.m. (EST) on Friday, February 12, 2021, deliver to the Receiver and this Honourable Court an affirmed declaration in writing in the English Language confirming that all the steps in paragraph 6 above have been completed, together with copies of all written records of the steps having been taken.

9. **THIS COURT ORDERS** that no person with notice of the Order, including but not limited to Hals and Juan Guillermo Gutierrez, shall take any steps to advance the Criminal Complaint or to participate in any way in the Criminal Complaint or proceedings arising out of the Criminal Complaint and/or any other criminal proceedings against Alvaro Almengor, Manuel Carrasquilla, Lidia Ramos or any other agent or representative of the Receiver without leave of this Court.

10. **THIS COURT ORDERS** that this Order is without prejudice to the right of Hals or Juan Guillermo Gutierrez to return to this Court on at least 4 days notice to seek leave of this Court to file proceedings in Panama.

11. **THIS COURT ORDERS** that this Order shall be in full force in effect immediately once signed without the need to be entered with the Court.



12. **THIS COURT ORDERS** that the costs of this motion for interim relief is reserved **112**  
hearing of the balance of the Receiver's motion to be scheduled.

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, Mexico, Panama, Guatemala, Barbados, Bermuda, Venezuela, Colombia or Honduras to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read 'McEwen', is written above a horizontal line.

*(Signature of Judge)*

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**(Withdrawal of Affidavit and Criminal Complaint)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)

pgriffin@litigate.com

Tel: (416) 865-2921

Monique J. Jilesen (43092W)

mjilesen@litigate.com

Tel: (416) 865-2926

Derek Knoke (75555E)

dknoke@litigate.com

Tel: (416) 865-3018

**AIRD & BERLIS LLP**

Brookfield Place

181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

# EXHIBIT B

This is Exhibit "B" referred to in the Affidavit of Juan Guillermo Gutierrez sworn via videoconference on February 11, 2021



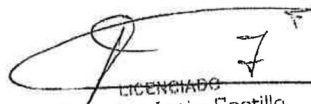
---

*Commissioner for Taking Affidavits (or as may be)*

**N. JOAN KASOZI (LSO# 70332Q)**

1 de 2

116

  
 LICENCIADO  
 Jeremías Lutín Castillo  
 ABOGADO Y NOTARIO

153631

**ACTA NOTARIAL DE DECLARACIÓN JURADA.** En la ciudad de Guatemala, departamento de Guatemala, el tres de diciembre de dos mil veinte, siendo las nueve horas, Yo, **Jeremías Lutín Castillo**, Notario en ejercicio, me encuentro constituido en la sexta (6ª) avenida "A", ocho - cero cero (8-00) de la zona nueve (9), Edificio Centro Operativo, Penthouse B, de la Ciudad de Guatemala, departamento de Guatemala, a requerimiento del señor **Juan Guillermo Gutiérrez Strauss**, quien manifiesta ser de sesenta y cuatro años de edad, casado, ejecutivo, guatemalteco, con domicilio la República de Canadá, y de tránsito por esta ciudad capital, se identifica con el Documento Personal de Identificación con Código Único de Identificación dos mil quinientos diecisiete, veintiséis mil cincuenta y tres, cero ciento uno (2517260530101), extendido por el Registro Nacional de las Personas de la República de Guatemala, a efecto que por la presente **ACTA NOTARIAL DE DECLARACIÓN JURADA**, haga constar lo siguiente: **PRIMERO:** El señor Juan Guillermo Gutiérrez Strauss, enterado de las penas relativas al delito de perjurio, bajo juramento solemne prestado de conformidad con la ley, DECLARA lo siguiente: a) que actúa en su calidad de Director - Presidente de la entidad XELA ENTERPRISES LTD, entidad constituida e inscrita de conformidad con las leyes de la República de Canadá, Provincia de Ontario, con número de empresa en Ontario un millón doscientos noventa y siete mil quinientos ochenta (1297580); b) que su representada, es única accionista de la entidad GABINVEST, S.A., entidad constituida de conformidad con las leyes de la República de Panamá, inscrita en el Registro Público de Panamá, al folio número ciento diecisiete mil quinientos once (117511); dicha participación accionaria está sustentada con: i) certificado de acción número GI - cero cien (GI-0100) el cual ampara trescientas cuarenta y ocho (348) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD; y ii) certificado de acción número GI - cero ciento uno (GI-0101) el cual ampara setenta y cinco (75) acciones de la entidad GABINVEST, S.A.,




propiedad de XELA ENTERPRISES LTD.; iii) certificado de acción número GI – cero ciento dos (GI-0102) el cual ampara señenta y cinco (75) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD.; c) Siendo así, DECLARO que mi representada, la entidad XELA ENTERPRISES LTD, no fue notificada o convocada de ninguna forma para participar en la Asamblea de Accionistas de la entidad GABINVEST, S.A., celebrada el dieciséis de enero de dos mil veinte, mediante la cual se dejó sin efecto los nombramientos de la Junta Directiva reconocida de la entidad GABINVEST, S.A., disponiendo en tal sentido, el nombramiento de una nueva junta directiva, presidida por el señor Alvaro Almengor como Presidente, MANUEL CARRASQUILLA como Secretario y LIDIA RAMOS como Tesorera. Dichas personas no son del conocimiento de mi representada, y tampoco tienen el aval, autorización o mandato para representar a la entidad GABINVEST, S.A., por no ser miembros de Junta Directiva propuestos y electos por el Accionista de la mencionada sociedad; d) asimismo DECLARO, que nunca mi representada, en su calidad de único accionista de la entidad GABINVEST, S.A. ha celebrado Asamblea de Accionistas o ha estado informado de ninguna de sesión de esta naturaleza VÍA TELEFÓNICA celebrada con fecha veintinueve de abril de dos mil veinte, con los señores Alvaro Almengor en su supuesta calidad de Presidente de GABINVEST, S.A.; así como tampoco ha ordenado la modificación del pacto Social de la entidad GABINVEST, S.A. DE NINGUNA FORMA, por lo que cualquier decisión, nombramiento o disposición realizada por los señores Alvaro Almengor como supuesto Presidente, MANUEL CARRASQUILLA como supuesto Secretario y LIDIA RAMOS como supuesta Tesorera de la entidad GABINVEST, S.A., NO TIENE VALOR ALGUNO, y son producto de falsedad en su forma y fondo y cualquier otro delito que corresponda según los actos cometidos. **SEGUNDO:** No habiendo nada más que hacer constar se da por terminada la presente acta notarial en el mismo lugar y fecha cuarenta y cinco minutos después de su



Inicio, la cual se encuentra contenida en dos hojas de papel simple, útil la primera en ambos lados y la segunda en su anverso, a la que le adhiero un timbre notarial de diez quetzales y un timbre fiscal de cincuenta centavos de quetzal. Leído íntegramente lo escrito al requirente, bien impuesto de su contenido, valor y efectos legales, la ratifica, acepta y firma. DOY FE.

(f) 

Ante mí:

  
LICENCIADO  
Jeremías Lutín Castillo  
ABOGADO Y NOTARIO



DE REG  
EPART  
E AUT  
ATEMI



MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISES LTD. et al  
Respondents

Court File No. CV-11-9062-00CL

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

---

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

---

**CAMBRIDGE LLP**  
333 Adelaide Street West  
4th Floor  
Toronto, Ontario  
M5V 1R5

**Chris Macleod** (LSUC# 45723M)  
cmacleod@cambridgellp.com  
Tel: 647.346.6696

**N. Joan Kasozi** (LSUC# 70332Q)  
jkasozi@cambridgellp.com

Tel: 416.477.7007  
Fax: 289.812.7385

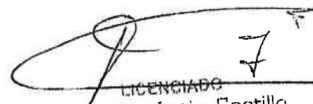
Lawyers for the Respondent,  
Juan Guillermo Gutierrez



# ANNEX C

1 de 2

121

  
 LICENCIADO  
 Jeremías Lutín Castillo  
 ABOGADO Y NOTARIO

63631

**ACTA NOTARIAL DE DECLARACIÓN JURADA.** En la ciudad de Guatemala, departamento de Guatemala, el tres de diciembre de dos mil veinte, siendo las nueve horas, Yo, **Jeremías Lutín Castillo**, Notario en ejercicio, me encuentro constituido en la sexta (6ª) avenida "A", ocho - cero cero (8-00) de la zona nueve (9), Edificio Centro Operativo, Penthouse B, de la Ciudad de Guatemala, departamento de Guatemala, a requerimiento del señor **Juan Guillermo Gutiérrez Strauss**, quien manifiesta ser de sesenta y cuatro años de edad, casado, ejecutivo, guatemalteco, con domicilio la República de Canadá, y de tránsito por esta ciudad capital, se identifica con el Documento Personal de Identificación con Código Único de Identificación dos mil quinientos diecisiete, veintiséis mil cincuenta y tres, cero ciento uno (2517260530101), extendido por el Registro Nacional de las Personas de la República de Guatemala, a efecto que por la presente **ACTA NOTARIAL DE DECLARACIÓN JURADA**, haga constar lo siguiente: **PRIMERO:** El señor Juan Guillermo Gutiérrez Strauss, enterado de las penas relativas al delito de perjurio, bajo juramento solemne prestado de conformidad con la ley, **DECLARA** lo siguiente: a) que actúa en su calidad de Director - Presidente de la entidad XELA ENTERPRISES LTD, entidad constituida e inscrita de conformidad con las leyes de la República de Canadá, Provincia de Ontario, con número de empresa en Ontario un millón doscientos noventa y siete mil quinientos ochenta (1297580); b) que su representada, es única accionista de la entidad GABINVEST, S.A., entidad constituida de conformidad con las leyes de la República de Panamá, inscrita en el Registro Público de Panamá, al folio número ciento diecisiete mil quinientos once (117511); dicha participación accionaria está sustentada con: i) certificado de acción número GI - cero cien (GI-0100) el cual ampara trescientas cuarenta y ocho (348) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD; y ii) certificado de acción número GI - cero ciento uno (GI-0101) el cual ampara setenta y cinco (75) acciones de la entidad GABINVEST, S.A.,



propiedad de XELA ENTERPRISES LTD.; iii) certificado de acción número GI – cero ciento dos (GI-0102) el cual ampara setenta y cinco (75) acciones de la entidad GABINVEST, S.A., propiedad de XELA ENTERPRISES LTD.; c) Siendo así, DECLARO que mi representada, la entidad XELA ENTERPRISES LTD, no fue notificada o convocada de ninguna forma para participar en la Asamblea de Accionistas de la entidad GABINVEST, S.A., celebrada el dieciséis de enero de dos mil veinte, mediante la cual se dejó sin efecto los nombramientos de la Junta Directiva reconocida de la entidad GABINVEST, S.A., disponiendo en tal sentido, el nombramiento de una nueva junta directiva, presidida por el señor Alvaro Almengor como Presidente, MANUEL CARRASQUILLA como Secretario y LIDIA RAMOS como Tesorera. Dichas personas no son del conocimiento de mi representada, y tampoco tienen el aval, autorización o mandato para representar a la entidad GABINVEST, S.A., por no ser miembros de Junta Directiva propuestos y electos por el Accionista de la mencionada sociedad; d) asimismo DECLARO, que nunca mi representada, en su calidad de único accionista de la entidad GABINVEST, S.A. ha celebrado Asamblea de Accionistas o ha estado informado de ninguna de sesión de esta naturaleza VÍA TELEFÓNICA celebrada con fecha veintinueve de abril de dos mil veinte, con los señores Alvaro Almengor en su supuesta calidad de Presidente de GABINVEST, S.A.; así como tampoco ha ordenado la modificación del pacto Social de la entidad GABINVEST, S.A. DE NINGUNA FORMA, por lo que cualquier decisión, nombramiento o disposición realizada por los señores Alvaro Almengor como supuesto Presidente, MANUEL CARRASQUILLA como supuesto Secretario y LIDIA RAMOS como supuesta Tesorera de la entidad GABINVEST, S.A., NO TIENE VALOR ALGUNO, y son producto de falsedad en su forma y fondo y cualquier otro delito que corresponda según los actos cometidos. **SEGUNDO:** No habiendo nada más que hacer constar se da por terminada la presente acta notarial en el mismo lugar y fecha cuarenta y cinco minutos después de su




Inicio, la cual se encuentra contenida en dos hojas de papel simple, útil la primera en ambos lados y la segunda en su anverso, a la que le adhiero un timbre notarial de diez quetzales y un timbre fiscal de cincuenta centavos de quetzal. Leído íntegramente lo escrito al requirente, bien impuesto de su contenido, valor y efectos legales, la ratifica, acepta y firma. DOY FE.

(f) 

DE REG  
EPART  
E AUT  
ATEMI



Ante mí:

  
LICENCIADO  
Jeremías Lutín Castillo  
ABOGADO Y NOTARIO





# Shipment Receipt

124

## Shipment From

Cambridge LLP  
Joan Kasozi  
333 Adelaide Street West  
6th Floor

M5V1R5 TORONTO ONTARIO  
Canada  
+16477029117

yyz.servicepoint@dhl.com

## Shipment To

Ministerio Publico de Panama  
LEYDI NUNEZ  
Procuraduria General de la Nacion,  
Edificio Saloon, Avenida Peru y Calle 33 (Ecu  
Frente a la Basilica  
PANAMA PANAMA CITY  
Panama  
+5075073000

## Shipment Details

Shipment Date: 2021-02-11  
Waybill Number: 4608518596  
Service Type: EXPRESSEASY  
Packaging Type: Your Own Package  
Number of Pieces: 1  
Total Weight: 1.00lbs  
Dimensional: 0.00lbs  
Chargeable: 1.00lbs  
Insured Amount:  
Terms of Trade:

## International Information

Declared Value:  
Duties&taxes acct:  
Dutiable Status: Non-Dutiable  
Estimated Del date: Wednesday, 17 Feb, 2021  
Promo Code:

## Billing Information

Payment Type: DHL Account Number  
Billing Account: Cash Shipment  
Duties&taxes acct:  
Charge Breakdown: 79.90 CAD  
Special Services:

Charge is estimated until DHL reweigh

## Reference Information

Reference: Est.\$83.15 > Express Easy <  
Pickup reference nr:

## Description of Contents

Documents

MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISES LTD. et al  
Respondents

Court File No. CV-11-9062-00CL

---

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**TORONTO**

---

**AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ**

---

**CAMBRIDGE LLP**  
333 Adelaide Street West  
4th Floor  
Toronto, Ontario  
M5V 1R5

**Chris Macleod** (LSUC# 45723M)  
cmacleod@cambridgellp.com  
Tel: 647.346.6696

**N. Joan Kasozi** (LSUC# 70332Q)  
jkasozi@cambridgellp.com

Tel: 416.477.7007  
Fax: 289.812.7385

Lawyers for the Respondent,  
Juan Guillermo Gutierrez

## Appendix “B”

---

**CERTIFIED TRANSLATION**

---

**I, JONATHAN WHITESIDE, a professional translator and MCIS Accredited and Certified Interpreter, Membership # R005992 , in the city of Toronto, Province of Ontario, Dominion of Canada, MAKE OATH AND SAY AS FOLLOWS:**

I am fluent in both the English and Spanish languages. I hereby state that the translation of the following is a complete and accurate translation from the Spanish language to English.

- **Letter written by HARALD JOHANNESSEN HALS to JUAN G. GUTIERREZ on February 15<sup>th</sup>, 2021.**

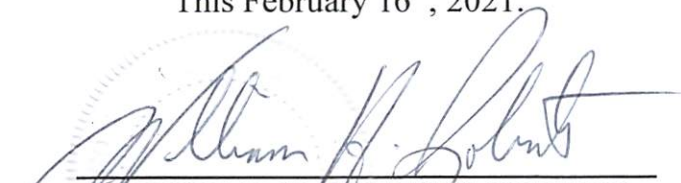
I make this solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under Oath.



---

**Jonathan Whiteside, Translator**  
MCIS Accredited and Certified Interpreter # R005992  
Approved by the Ontario Ministry of  
Citizenship and Immigration  
1377 Weston Rd., Unit 1  
Toronto, ON. M6M 4S1  
416-244-4831

**SWORN** in the  
City of Toronto  
In the Province of Ontario  
This February 16<sup>th</sup>, 2021.



---

**WILLIAM H. ROBERTS, NOTARY**  
Barrister and Solicitor  
203A, 881A Jane St.  
Toronto, Ont. M6N 4C4





Panama, February 15<sup>th</sup> of 2021

Mr.  
Juan G. Gutierrez

**Re: Response to your request.**

It is with amazement that I receive your request, to comply with an order from the Hon. Judge Thomas J. McEwan, an officer of a court in the city of Toronto, Canada, where a court action is taking place against the entity XELA S.A.

An analysis undertaken by the Panamanian and Guatemalan legal team concludes without a shadow of a doubt that the judge has overstepped his powers and invades a foreign jurisdiction in a boorish and gross way.

In the following, please allow me to undertake various legal considerations with respect to this topic:

## **I. PRINCIPLE OF TERRITORIALITY**

The delegation that the State undertakes from its jurisdictional authority, in certain entities, institutions and state officials is known as “competency”. Thus, as happens in a particular case, the requirements or hypotheses provided for by the law to designate an institution as competent, will give to this organ the authority to receive and judge the specific case. It is for this reason that it is affirmed that jurisdiction is ultimately an adjudication of competency.

There are three types of jurisdiction: i) to prescribe or normative; ii) administrative or executive; and iii) judicial; by virtue of which, the domestic courts have the authority to take actions destined to execute the law applying it in its territory.

One of the fundamental pieces of the new international penal jurisdiction created by the Rome Statute is that called the principle of complementarity. This means that international justice does not displace national justice, but rather complements it. For this reason, this principle may be considered as a convergence and conciliation space within the concept of sovereignty. This is on the one hand, and on the other, the concept of operation and the safeguarding of an international legal order. In the operation of this principle, it is necessary to take into account the connection which should exist between the attributions and national jurisdictional possibilities and the corresponding international order. Currently, it is understood that this type of jurisdiction extends to the state authorities in charge of penal prosecution such as prosecutor’s offices or public ministries, particularly in the context of crimes with an international character.

Precisely, it is in this last category in which the analysis focuses. This is because it is related with the trying of international crimes; bearing in mind that both the jurisdiction destined to prepare the rules as well as judicial, especially in criminal matters, are within its scope. This is because the application made by penal law courts is simply the exercise – or the updating – of the norm dictated by the State in the execution of its legislative or prescriptive function.

The principle of territoriality is the expression which gives authority to the States to exercise these three types of jurisdiction within its borders. Nevertheless, classic international law exempts both foreign States, including those governing them, such as their diplomatic agents, from the normal application of the law on the basis of territoriality. This is because they enjoy immunity with the understanding that this guarantee is indispensable so that official representatives of States can exercise those acts essential for the adequate administration of a State.

## II. REQUEST OR LETTERS ROGATORY

We should emphasize that in any event, when collaboration between foreign courts is necessary, this must be done by means of *requests or letters rogatory*, which are the means of communication between the courts. This has as its origin the fact that **every court enjoys a sphere of territorial competency outside of which it cannot act**, but nevertheless, requires that some procedure be applied in another judicial jurisdiction.

In procedural law, a Request is known as a request within the framework of a judicial proceeding by which a judge or court, in the exercise of its functions, directs itself to another judge or court of its same level, so that the destination judge execute a procedural act necessary for the litigation which is the responsibility of the judge of origin.

## III. FAILURE TO REPORT

In the case we have at hand, it is the **OBLIGATION**, of every citizen, who becomes aware of the commission of a crime, to bring it to the attention of the competent authority. To the contrary, this citizen incurs the crime of failure to report. Furthermore, the norm is one of **CONSTITUTIONAL RANK**.

What has been requested by Judge Thomas J. McEwan, is clearly illegal and I immediately inform you that we will appeal to every and all courts to protect our rights as citizens, including complaining to the Panamanian Chancellery's Office.



#### IV. ON THE EVIDENCE ATTACKED

In our legislation that exist legal rules which regulate the body of evidence to include in a criminal complaint. The most important of these is the RELEVANCE TEST. The Relevance Test is that into which fall all those elements which permit the adjudicating person to correctly verify and consider the propositions and facts argued in the specific case.

On the basis of the foregoing I must inform you that this servant will not favourably process this request.

With no other matter at hand,

\_\_\_\_\_  
[Signature]

**HARALD JOHANNESSEN HALS**

**Director – President**

**Note: I declare under oath that this document in its totality was prepared by Guatemalan and Panamanian lawyers and that in no way was there interference of any kind by Mr. Juan Guillermo Gutierrez S.**

**Notwithstanding that in the past the honourable arbiter has made statements to the effect that Mr. Gutierrez S. gives me instructions and orientation, I request that, if you are going to give them in this case at hand, then these should be duly proved and that they not be mere speculations.**





Panamá, febrero 15 de 2021

Señor  
**Juan G. Gutiérrez**

**Referencia: Respuesta a su solicitud.**

Con asombro recibo su solicitud, de dar cumplimiento a una orden del señor Juez Thomas J. McEwen, funcionario de un juzgado de la Ciudad de Toronto, Canadá, donde cursa proceso de intervención contra la entidad XELA S.A.

En análisis realizado por el equipo jurídico panameño y guatemalteco, concluimos sin asomo de duda que el juez desborda sus poderes e invade una jurisdicción extranjera de manera burda y grosera.

A continuación, me permito realizarle varias consideraciones jurídicas respecto del tema:

#### **I. PRINCIPIO DE TERRITORIALIDAD**

La delegación que el Estado realiza desde su facultad jurisdiccional, en ciertas entidades, instituciones y funcionarios estatales se conoce como “competencia”. Así, conforme concurren en un caso particular, los requisitos o hipótesis previstos por la norma para designar a una institución como competente, surgirá para dicho órgano la facultad para conocer y juzgar el caso específico, es por ello que se afirma que la jurisdicción es en última instancia una adjudicación de competencia.

Existen tres formas de jurisdicción: i) para prescribir o normativa; ii) administrativa o ejecutiva; y iii) judicial, en virtud de la cual, los tribunales domésticos tienen la facultad de tomar acciones destinadas a ejecutar la ley aplicándola en su territorio.

Una de las piezas fundamentales de la nueva jurisdicción penal internacional creada por el Estatuto de Roma es el denominado principio de complementariedad. Esto significa que la justicia internacional no desplaza a la justicia nacional, sino la complementa. Por ello, dicho principio puede considerarse como un espacio de convergencia y conciliación entre el concepto de soberanía, por una parte, y el concepto de operación y salvaguarda de un orden jurídico internacional. por la otra. En la operación de este principio es preciso tomar en cuenta el enlace que debe existir entre las atribuciones y posibilidades jurisdiccionales nacionales y las correspondientes al orden internacional. Actualmente se entiende que este tipo de jurisdicción se extiende a las autoridades estatales encargadas de la persecución penal como Fiscalías o Ministerios Públicos, particularmente en el contexto de delitos de carácter internacional.

2/3

Precisamente, es en esta última categoría en la que este análisis se enfoca, dado que se relaciona con el enjuiciamiento de crímenes internacionales, teniendo presente que tanto la jurisdicción destinada a la elaboración de normas como la judicial, especialmente en materia penal, son congruentes en su alcance, debido a que la aplicación que realizan los tribunales del derecho penal es simplemente el ejercicio -o la actualización- de la norma dictada por el Estado en la ejecución de su función legislativa o prescriptiva.

El principio de territorialidad es la expresión que da facultad a los Estados para ejercer estos tres tipos de jurisdicción dentro de sus fronteras. Sin embargo, el derecho internacional clásico exceptúa tanto a los Estados extranjeros, incluidos sus gobernantes, como a sus agentes diplomáticos, de la normal aplicación de la ley sobre la base de la territorialidad, por gozar de inmunidad en el entendido que esta garantía es indispensable para que los representantes oficiales de los Estados puedan ejercer aquellos actos esenciales para la adecuada administración de un Estado.

## II. EXHORTO O CARTA ROGATORIA

Debemos recalcar que en todo caso, cuando se deba dar una colaboración entre juzgados extranjeros, esta se debe dar a través de *exhortos o carta rogatoria*, los cuales son un medio de comunicación entre los juzgados; que tiene su origen en el hecho de que **cada juez gozan un ámbito de competencia territorial fuera del cual no puede actuar**, y sin embargo requiere que alguna diligencia sea practicada en otro partido judicial. En este sentido, el exhorto debe entenderse como una forma de colaboración entre autoridades jurisdiccionales.

En Derecho procesal se denomina Exhorto a una solicitud en el marco de un procedimiento judicial por la cual un juez o un tribunal, en uso de sus funciones, se dirige hacia otro juez o tribunal de su misma jerarquía, a efectos que el juez destinatario ejecute un acto procesal necesario para el litigio a cargo del juez de origen.

Vemos entonces que es abiertamente arbitrario, tratar de hacer retirar una prueba a través de un tercero, sin respetar el procedimiento adecuado y las herramientas destinadas para ello.

## III. OMISIÓN DE DENUNCIA

En el caso que nos ocupa es **OBLIGACIÓN**, de todo ciudadano que conozca de la comisión de un delito ponerlo en conocimiento de la autoridad competente. En caso contrario este ciudadano incurriría en el Delito de Omisión de Denuncia. Norma que además es de **RANGO CONSTITUCIONAL**.

Lo solicitado por el Juez Thomas J. McEwen, es abiertamente ilegal y de una vez le informo acudiremos a todas las instancias para proteger nuestros derechos como ciudadanos, incluyendo queja a la cancillería panameña.

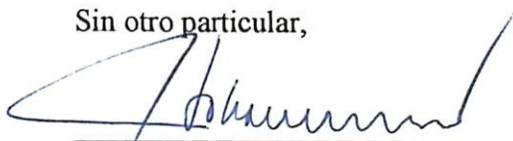


#### IV. DE LA PRUEBA ATACADA

En nuestra legislación existen unas reglas jurídicas, que regulan el acervo probatorio a incluir en una querrela penal. El más importante de ellos es la PERTINENCIA DE LA PRUEBA. La Prueba Pertinente es aquella en la que recaería todos aquellos elementos que permitan al juzgador verificar y ponderar correctamente las preposiciones y hechos argüidos en el caso en particular.

Dicho lo anterior debo informarle que este servidor despachara desfavorablemente esta solicitud.

Sin otro particular,



**HARALD JOHANNESSEN HALS**  
Director - Presidente

**Nota: Bajo la gravedad del juramento declaro que este documento en su totalidad fue redactado por los abogados guatemaltecos y panameños y que de manera alguna no hubo intervención de ninguna naturaleza del señor Juan Guillermo Gutierrez S.**

**Como quiera que en el pasado el señor interventor ha hecho manifestaciones en el sentido de que el Señor Gutierrez S. me da instrucciones y orientación, solicito que, si las va a hacer en este caso que nos ocupa, estas sean debidamente probadas y no meras especulaciones.**



MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISE LTD. et al.  
Respondents

Court File No. CV-11-9062-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**SECOND SUPPLEMENTAL MOTION RECORD OF THE  
RECEIVER**  
**(Reply to Affidavits and Update on Criminal Complaint in  
Panama)**

**LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP**  
**Barristers**  
130 Adelaide Street West, Suite 2600  
Toronto ON M5H 3P5

Peter H. Griffin (19527Q)  
pgriffin@litigate.com  
Tel: (416) 865-2921  
Monique J. Jilesen (43092W)  
mjilesen@litigate.com  
Tel: (416) 865-2926  
Derek Knoke (75555E)  
dknoke@litigate.com  
Tel: (416) 865-3018

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754, 181 Bay Street  
Toronto, Ontario M5J 2T9

Kyle B. Plunkett (61044N)  
kplunkett@airdberlis.com  
Sam Babe  
Email: sbabe@airdberlis.com  
Tel: (416) 863-1500

Lawyers for the Receiver, KSV Restructuring Inc.